

DUNCAN NEW HAVEN OWNER LLC

V.

CITY OF NEW HAVEN BOARD OF
ZONING APPEALS

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD

AT HARTFORD- LAND USE LITIGATION DOCKET

JULY 18, 2019

MOTION BY CONSENT FOR THE ENTRY OF A STIPULATED JUDGMENT

Plaintiff, Duncan New Haven Owner LLC (“Plaintiff”), hereby moves by consent for the entry by this Court of the attached Stipulated Judgment. In support of this Motion, Plaintiff represents as follows:

1. Plaintiff filed the above captioned appeal of a decision of Defendant, City of New Haven Board of Zoning Appeals (the “BZA” or “Defendant”) on March 8, 2019 (the “Appeal”).

2. Plaintiff and Defendant wish to settle this Appeal on the terms set forth in the attached Stipulated Judgment (Exhibit A).

3. In accordance with the requirements of Practice Book § 14-78(j), consideration of this settlement was listed on the BZA's agenda for a special meeting held on July 16, 2019, which agenda was posted in accordance with the requirements of the Connecticut Freedom of Information Act, Conn. Gen. Stat. §§ 1-200 et seq. (Exhibit B).

4. On July 16, 2019, the BZA held a public meeting at which the reasons for the approval of the Stipulated Judgment were stated on the record and approved the Stipulated Judgment.

WHEREFORE, Plaintiff requests that this Court hold a hearing on this motion in accordance with Conn. Gen. Stat. § 8-8(n) and enter the Stipulated Judgment as an order of this Court.

THE PLAINTIFF,
DUNCAN NEW HAVEN OWNER LLC

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Its Attorneys

EXHIBIT A

DOCKET NO. HHD-LND-CV-19-6110818-S

DUNCAN NEW HAVEN OWNER LLC	:	SUPERIOR COURT
	:	
V.	:	JUDICIAL DISTRICT OF HARTFORD
	:	
	:	AT HARTFORD- LAND USE
	:	LITIGATION DOCKET
	:	
CITY OF NEW HAVEN BOARD OF	:	JULY 26, 2019
ZONING APPEALS	:	

STIPULATED JUDGMENT

WHEREAS, Plaintiff, Duncan New Haven Owner LLC (the “Plaintiff”), is the owner of real property known as 1151 Chapel Street, New Haven, CT 06511 (the “Property”) upon which a hotel, including a restaurant (the “Hotel”), is located; and

WHEREAS, on November 16, 2018, Plaintiff applied to Defendant, City of New Haven Board of Zoning Appeals (the “Defendant” or the “BZA”), for two special exceptions (the “Application”), which Application was assigned Appeal No. 18-79-S; and

WHEREAS, the Application sought a special exception to serve alcohol pursuant to a Hotel Liquor License to be applied for by Plaintiff with the Connecticut Liquor Control Commission under Conn. Gen. Stat. § 30-22 and for a special exception for a reduction in parking from 59 spaces (based upon the number of seats where liquor will be possibly served at the Hotel pursuant to a Hotel Liquor License), to one handicapped space; and

WHEREAS, the Application stated that the Plaintiff intended to provide valet parking for the Hotel and restaurant guests; and

WHEREAS, a public hearing on the Application was held before the BZA on January 8, 2019 and was closed on that date; and

WHEREAS, on February 19, 2019, the BZA deliberated on the Application (the “Deliberations”), and during the Deliberations, certain members of the BZA noted that the Plaintiff had not provided a copy of an agreement for valeting cars brought to the Property; and

WHEREAS, at the conclusion of the Deliberations, the BZA voted to deny the Application; and

WHEREAS, pursuant to Conn. Gen. Stat. § 8-8, on March 8, 2019, Plaintiff appealed the denial of the Application to the Connecticut Superior Court for the Judicial District of New Haven at New Haven; which appeal was transferred to the Land Use Litigation Docket on April 29, 2019; and

WHEREAS, Plaintiff has now provided the BZA with a copy of a Valet Parking Services Agreement (the “Valet Agreement”); and

WHEREAS, Plaintiff has represented to the BZA and this Court that it intends to provide valet services under the Valet Agreement twenty-four hours (24) each day; and

WHEREAS, Plaintiff has further represented to the BZA and this Court that in the event that the Valet Agreement is terminated before the end of the term of the Valet Agreement, which is 10 years and can be extended for one-year periods, it is Plaintiff’s intention to provide similar valet services for its Hotel and restaurant guests, either directly or through another valet operation, as long as the provision of such valet services is commercially reasonable; and

WHEREAS, based on the foregoing as well as other consideration, the BZA is willing to approve the granting of the Application; and

WHEREAS, in accordance with the requirements of Practice Book § 14-78(j), consideration of this Stipulated Judgment was listed on the BZA’s agenda for a special meeting

held on July 16, 2019 and posted in accordance with the requirements of the Connecticut Freedom of Information Act, Conn. Gen. Stat. §§ 1-200 et seq.; and

WHEREAS, at the BZA's July 16, 2019 public meeting, the reasons for the approval of this Stipulated Judgment were stated on the record, and the BZA approved this Stipulated Judgment; and

WHEREAS, on July 26, 2019, pursuant to Conn. Gen Stat. § 8-8(n), this Court held a hearing to determine whether this Stipulated Judgment should be approved and approved this Stipulated Judgment.

NOW THEREFORE, Plaintiff and the BZA agree that judgment may enter in favor of Plaintiff in accordance with the following terms:

1. The BZA shall immediately vacate its decision denying the Application and shall grant approval of the special exceptions requested in the Application, Appeal No. 18-79-S, and issue a written decision stating the same;

2. Neither Plaintiff nor Defendant shall appeal this Stipulated Judgment or seek to set it aside or modify it. In the event of a third party appeal of the approval of the Application or this Stipulated Judgment, each party shall take all reasonable steps to dismiss or oppose the third party appeal;

3. The Court shall retain jurisdiction over this case until such time as the terms set forth herein have been satisfied; and

4. No costs shall be taxed to either party.

THE PLAINTIFF,
DUNCAN NEW HAVEN OWNER LLC

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Date: July 18, 2019

THE DEFENDANT,
CITY OF NEW HAVEN BOARD OF
ZONING APPEALS

BY: s/ Roderick R. Williams
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Its Attorneys –

Date: July 18, 2019

ORDER

The foregoing Stipulated Judgment having been duly presented to this Court, it is hereby
APPROVED AND ENTERED AS A JUDGMENT OF THE COURT

Judge /Clerk

Date

EXHIBIT B

**Agenda
Special Meeting
New Haven Board of Zoning Appeals
July 16, 2019 6:30PM
City Plan Department Conference Room
165 Church Street, 5th Floor
New Haven, CT 06510**

1. Executive Session to Discuss Strategy and Negotiations of ongoing litigation of which the Board is a party—Duncan New Haven Owner, LLC v. City of New Haven Board of Zoning Appeals and PMG SLB II, LLC, et al. v. Board of Zoning Appeals of City of New Haven.
2. Consideration of a proposed settlement in Duncan New Haven Owner LLC v. City of New Haven Board of Zoning Appeals, Docket No. HHD-LND-CV-19-6110818-S. If the Board of Zoning Appeals approves the proposed settlement, there will be a hearing before the Superior Court for the Judicial District of Hartford at Hartford, Land Use Litigation Docket, 95 Washington Street, Hartford, CT on Friday, July 26, 2019 at 10:00 am. At the hearing, the court will consider whether to approve the settlement pursuant to Conn. Gen. Stat. Sec. 8-8(n). The courtroom in which the hearing will be held can be determined by consulting the Caseflow Office in Room 111 of the Courthouse on the day of the hearing.

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2019 JUL 15 AM 11:17

NEW HAVEN
CITY CLERK'S OFFICE
RECEIVED

CERTIFICATION OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was transmitted this 18th day of July, 2019, electronically to the Hartford Superior Court Clerk.

I further certify that a copy of the foregoing was served via U.S. Mail, postage prepaid, this 18th day of July, 2019 upon:

Roderick R. Williams
Deputy Corporation Counsel
Office of the New Haven Corporation Counsel
165 Church Street
New Haven, CT 06510
Email: rwilliam@newhavenct.gov

s/ Carolyn W. Kone
Carolyn W. Kone